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No. 92-155

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1992

STATEWIDE REAPPORTIONMENT ADVISORY COMMITTEE, ET AL,

APPELLANTS.

vs.

NICK THEODORE, ET AL,

APPELLEES.

CARROLL A. CAMPBELL, JR., GOVERNOR OF SOUTH CAROLINA,

APPELLANT,

vs.

NICK THEODORE, ET AL,

APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA (THREE-JUDGE COURT)

MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

I. Section 2 of the Voting Rights Act is a results test that can only accurately measure the results of a plan once it has been implemented.

II. The Three-Judge Court applied the standards of Section 2 of the Voting Rights Act to the Court ordered redistricting plans.

III. The Three-Judge Court ordered redistricting plans that comply with the Section 2 remedy.

IV. The Three-Judge Court correctly incorporated appropriate state policies in drawing the Court redistricting plans.

V. Section 5 standards of the Voting Rights Act were appropriately applied by the Three-Judge Court in fashioning its Court ordered redistricting plans.

PARTIES TO THE PROCEEDINGS

In the case of Statewide Reapportionment Advisory Committee v. Sheheen, C.A. No. 3:91-3310-1, the Appellants are the Statewide Reapportionment Advisory Committee, D. William Gibson, Bishop Frederick Calhoun James, Rev. Herbert Williams, Willie B. Owens, and South Carolina State Conference of the NAACP Branches. The appellees are Nick Theodore, Lieutenant Governor of South Carolina, Robert J. Sheheen, Speaker of the South Carolina House of Representatives, and James B. Ellisor, the then Executive Director of the South Carolina State Election Commission who were named Defendants in this case and the Intervenors Robin Tallon, Neil A. Vander Linden, Forrest E. Ott, Phillip T. Jones, Ann Y. Hart, Peggy A. Dufek, Gwendolyn L. Grooms, the South Carolina Senate and the South Carolina Democratic Party. Governor Campbell was a Defendant below but is a cross Appellant in this

appeal.

The Statewide Reapportionment Advisory Committee case was consolidated with the case of Burton v. Sheheen, C. A. No. 3:91-2983-1, which had already been filed. The Plaintiffs were Michael G. Burton, as Executive Director and on behalf of the Republican Party, William P. Collins, III, Earl Copeland, William Patrick Flack, Frank E. Gibson, III, Nancy D. Hawk, and Gus Roberts. Kimberly T. Burch was a plaintiff-intervenor. The defendants were Robert J. Sheheen, Nick Theodore, James B. Ellisor, and Carroll A. Campbell, Jr. The defendant-intervenors were Robin Tallon, Neil A. Vander Linden, Forrest E. Ott, Philip T. Jones, Ann Y. Hart, Peggy A. Dufek, Gwendolyn L. Grooms, the South Carolina Senate, and the Democratic Party of South Carolina. Katharine I. Butler was amicus curiae.

In the consolidated case of Blanton v.

Campbell, C.A. No. 3:91-3635-1, the plaintiffs were Bufort Blanton, Neil A. Vander Linden, Forrest E. Ott, Ann Y. Hart, Peggy A. Dufek, and Vincent Johnson. The defendants were Carroll A. Campbell, Jr., Nick Theodore, Robert J. Sheheen, James B. Ellisor, Dorchester County Legislative Delegation, State of South Carolina, Sherry Martschink, Stephen E. Gonzales, Annette Young, Sandra S. Wofford, George H. Bailey, John W. Matthews, Jr., Michael T. Rose, and the South Carolina Senate.

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MOTION TO DISMISS OR AFFIRM

MOTION OF APPELLEE TO DISMISS OR AFFIRM

The Appellee, Robert J. Sheheen, Speaker of the South Carolina House of Representatives, moves the Court to either dismiss

the Appeal filed by the Statewide Reapportionment Advisory Committee and the Cross-Appeal of the Honorable Carroll A. Campbell, Governor of the State of South Carolina or in the alternative to affirm the judgment of the Three-Judge Court which redistricted the South Carolina House, South Carolina Senate and Congressional Districts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved in this appeal are the First, Thirteenth, Fourteenth and Fifteenth Amendment and Article I, Section 2 of the United States Constitution, and Article III, Section 3 of the South Carolina Constitution. The statutory provisions involved in this appeal are Sections 2 and 5 of the Voting Rights Act as codified in 42 U.S.C. 1973 and 1973(c). All these provisions, except Article I, Section 2 of the United States Constitution, are set out in the Appendix to the Statewide Reap-

portionment Advisory Committee's Jurisdictional Statement at pages 478 through 485. Article I, Section 2 of the United States Constitution is set out in the Appendix to this Motion. App. 1-3, infra.

STATEMENT OF THE CASE

On October 4, 1991, a case entitled Burton v. Sheheen was instituted in the District Court of the District of South Carolina. The case alleged that the existing South Carolina Senate, House and Congressional plans were malapportioned, that the Legislature and the Governor were deadlocked, and that the Court should draw interim plans. A Three-Judge Court was designated. On October 31, 1991, the Statewide Reapportionment Advisory Committee (SRAC) filed a separate suit basically alleging the same grounds raised in the Burton case and requesting the same relief, SRAC v. Campbell. These two cases were consolidated for trial on November 13, 1991.

A third case was then filed which primarily raised the issue of the constitutionality of County Legislative Delegations, Blanton v. Campbell. This case also was consolidated with the Burton and SRAC case. The issues in Blanton were bifurcated before trial and none of the issues raised in the Blanton case is at issue on appeal.

The Court allowed the South Carolina Senate, the South Carolina Democratic Party, Congressman Robin A. Tallon, Representative Kimberly Burch and individual Defendants Neil A. Vander Linden, Forrest E. Ott, Philip T. Jones, Ann Y. Hart, Peggy A. Dufek and Gwendolyn L. Grooms to intervene in the suit. Kimberly Burch was dismissed by consent prior to the trial.

After the cases were filed in October, Robert J. Sheheen, Speaker of the South Carolina House of Representatives, along with the Senate, moved to dismiss the proceedings on the grounds that the case had

been brought prematurely as there was reason to believe the process was not yet deadlocked and sufficient time remained for the Legislature to draw the plan and receive preclearance prior to the elections. The Legislature reconvened January 14, 1992. On January 23, 1992, the House and Senate adopted and ratified redistricting plans for both the House and Senate and submitted them to the Governor. On January 29, 1992, Republican Governor Carroll Campbell vetoed the plans. On February 5, 1992, the House was unable to override the Governor's veto on the House remap plan, falling four votes short of the necessary two-thirds vote to override. Congressional plans which had been passed in different forms by the House and Senate, became stalled in a Conference Committee. At that point the process finally became deadlocked. Thereafter, the parties withdrew their Motions to Dismiss and agreed not only that the existing dis-

tricts were malapportioned following the 1990 census, but that if timely elections were to be held, the Court would have to implement interim plans. The trial began February 18, 1992, and was concluded on March 6, 1992. An Order was issued on May 1, 1992. The Court's Order redistricted the South Carolina House, South Carolina Senate, and the Congressional Districts. It is from this Order that the Appeal by SRAC and a Cross-Appeal by the Governor has been made.

I.

SECTION 2 OF THE VOTING RIGHTS ACT IS A RESULTS TEST THAT CAN ONLY ACCURATELY MEASURE THE RESULTS OF A PLAN ONCE IT HAS BEEN IMPLEMENTED.

Section 2 of the Voting Rights Act prohibits the implementation of a redistricting plan that results in the dilution of minority voting strength. As a practical matter it is difficult, if not impossible, for a court to consider whether a particular

plan meets Section 2 criteria unless and until that plan has been implemented and elections have been held under the plan. Section 2 judgment of a prospective redistricting plan would be educated guesswork at best, as reliable and relevant data is unavailable to evaluate future election results under the proposed boundaries. Election history and data from races held under former plans with different demographic and geographic makeups could be the only guide for a court to utilize while making its prospective determination of whether a Section 2 violation would occur.

In Thornburg v. Gingles, 478 U.S. 30 (1986), the Court stated that

> [t]he essence of a §2 claim is that a certain electoral law, practice or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.

Gingles at 47.

A Section 2 case, therefore, is a test of an existing situation against the social and historic context. With a court drawn plan, there is no "existing" situation with which to gauge the result of the implementation of the plan. See, De Grandy v. Wetherell, TCA 92-40015-WS, at 14 (N.D. Fla. May 29, 1992).

The Court further noted in Gingles that Section 2 had been amended to reflect, inter alia, the "right questions" that should be brought in a Section 2 lawsuit. Specifically

> [t]he 'right' question as the Report emphasizes repeatedly, is whether 'as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.' [cite omitted]
>
> In order to answer this question, a court must assess the impact of the contested structure or practice on minority electorial opportunities 'on the basis of objective factors.' [Cite omitted] [Emphasis added]

Gingles, 478 U.S. at 44.

The Three-Judge Court quoting portions of the above-cited language likewise stated that

> [i]t is important to remember ... that §2 involves a challenge to the effects or intent of a specific plan and the crucial aspect of the proceeding is the determination of liability. Gingles, 478 U.S. at 44 (quoting Senate Report at 27). [Emphasis in original]

SRAC Appendix 41.

Obviously, as the Three-Judge Court found

> ... a §2 plaintiff is attacking an existing practice and a plan being challenged under §5 must be advocated .... [Emphasis in original]

SRAC Appendix 41.

No party defended the existing plans, nor suggested the continued use of these plans. All parties were in agreement that demographic changes documented by the 1990 census dictated redistricting. Given that agreement by the parties, the application of Section 2 to the existing plan was moot.

The Court then had to determine if it would choose a plan from the various plans submitted by each party or fashion its own interim plan. In doing the latter, the Court took into consideration the appropriate Section 2 factors.

Under Section 2 criteria, the only true test of the Court drawn redistricting plans could occur after elections have been held and a new action is brought in Federal District Court. The right of these parties, or other non-parties, to exercise the option of post election litigation challenging the new plans on a Section 2 basis is not prejudiced by the lower court's Order.

In fact as the Three-Judge Court found, if it had

> ... completely graft[ed] the requirements of Section 2 into Section 5, the court would impair the duality of remedies currently afforded aggrieved parties under principles of res judicata or separation of powers.

SRAC Appendix 42.

II.

THE THREE JUDGE COURT APPLIED THE STANDARDS OF SECTION 2 OF THE VOTING RIGHTS ACT TO THE COURT ORDERED RE-DISTRICTING PLANS.

Faced with the task of redistricting the State House, State Senate and Congress, the Court did not ignore Section 2 in the drawing of these plans. Although a total adoption of the tests and requirements of Section 2 was not made, the standards of Section 2 were utilized in formulating the plans drafted by the Court. The Court in fact stated that "[i]t would be incongruous for the court to adopt a plan which did not comport with the standards and guidelines of §2". SRAC Appendix 38. The Court went on to state that

> ... since it would be anomalous for this court to adopt a plan which immediately lends itself to an attack under §2, our analysis should ensure that the threshold requirements of a §2 action cannot be established under the adopted plan.

SRAC Appendix 45.

In Gingles, the United States Supreme Court addressed the requirements of the revised Section 2 standards. The Gingles case arose in the context of a lawsuit regarding the multimember redistricting [1] plan drawn for the North Carolina State Senate. The Supreme Court held that Plaintiffs bringing a Section 2 case must be able to meet all parts of a three-fold threshold test. The minority group had to be:

> ... sufficiently large and geographically compact to constitute a majority in a single member district ... the minority group must be able to show that it is politically cohesive ... [and] the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it - in the absence of special circumstances ... usually to defeat the minority's preferred candidate.

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[1] In the present case the Court redistricted already existing single member districts. The South Carolina House has been elected from single-member districts since 1974, and the South Carolina Senate since 1984.

Gingles at 50-51.

Each element must be present in order for the suit to be maintained. See, McNeil v. Springfield Park Dist., 851 F.2d. 937 (7th Cir. 1988) cert. den, 490 U.S. 1031 (1989); Monroe v. City of Woodville, 881 F.2d. 1327 (5th Cir. 1989) mod. 897 F.2d 763 (5th Cir. 1990), cert. den. 911 S.Ct. 71 (1990). If this threshold has been met, however, the Court

> ... is to consider the 'totality of the circumstances' and to determine, based 'upon a searching practical evaluation of the "past and present reality," '[cite omitted] whether the political process is equally open to minority voters. '"This determination is peculiarly dependent upon the facts of each case"' [cites omitted] ... and requires 'an intensely local appraisal of the design and impact' of the contested electoral mechanisms. [Cite omitted].

Gingles, at 79.

As a guideline for implementing a Section 2 review, this Court in Gingles cited the Senate Report findings of the typical relevant factors in a Section 2

case. The cited list includes such factors as the history of voting related discrimination, the extent of racial polarization in voting, utilization by the state of voting practices that increase the opportunity for discrimination, exclusion of minorities from candidate slating, the extent to which minorities bear the effects of past discrimination, the use of overt or subtle racial appeals in political campaigns, and the extent to which minorities had won election to public office. Gingles, at 44-45. The Senate Report also emphasized, though, that the list was not exhaustive nor did any particular group of factors have to be proven. Gingles, at 45.

Of these factors the SRAC Appellants admit that

> SRAC and the Burton plaintiffs submitted substantial evidence of the factors deemed probative of minority vote dilution identified in Thornburg v. Gingles, 478 U.S. 30, 37, 45 (1986), and the Senate Report that accompanied the 1982 amendment of Section 2, to wit:

> (1) that blacks were geographically compact; [fn. cite omitted] (2) that blacks were politically cohesive; (3) that voting was racially polarized; (4) that there was a history of official discrimination in the state that touched the rights of blacks to participate in the electoral process; [fn. cite omitted] (5) the depressed socioeconomic status of minorities; [fn. cite omitted] (6) the extent to which minorities had been elected in congressional and legislative contests; [fn. cite omitted] and (7) the use of voting practices, such as a majority vote requirement for primary elections, that may enhance the opportunity for discrimination against the minority group.

SRAC Jurisdictional Statement 5-6.

They also state that they presented testimony as to political cohesiveness and racial block voting. [2] SRAC Jurisdictional Statement 6. See also, Order, SRAC Appendix 55-56.

The Appellants, therefore, presented Section 2 testimony and evidence to the

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[2] It was stipulated that there was evidence of racial political voting in South Carolina since 1984. SRAC Appendix 56.

Court and the Court utilized this information in the drawing of its plans.

III.

THE THREE-JUDGE COURT ORDERED REDISTRICTING PLANS COMPLY WITH THE SECTION 2 REMEDY.

There is no bright line test as to what constitutes a Section 2 remedy in every case; therefore; the appropriate Section 2 remedy must be decided case by case. Overton v. City of Austin, 871 F.2d 529 (5th Cir. 1989). A Section 2 remedy must be formulated to address and alleviate the problems proven in each case. In Jordan v. Winter, 604 F. Supp. 807, 813 (N.D. Miss. 1984) aff'd 469 U.S. 1002 (1984) the Court on remand stated that

> [i]n devising a plan to replace our prior plan for the impending election, we recognized the obligation to: (1) achieve the least possible deviation from the one person, one vote ideal, [cite omitted] (2) design a plan that is not racially discriminatory in either purpose or effect, [cite omitted] and (3) adhere to the state's policies except to the

> extent such policies are violative of either the Constitution or the Voting Rights Act [cite omitted].

And in U.S. v. Dallas County Commission., 850 F.2d 1433, 1437-38 (11th Cir. 1988), reh. den. 858 F.2d 746 (11th Cir. 1988), cert. den. 490 U.S. 1030 (1989) the Court stated that

> '[i]t is clear that any proposal to remedy a Section 2 violation must itself conform with Section 2.' Dillard v. Crenshaw County, 831 F.2d 246, 249 (11th Cir. 1987) (citing Edge v. Sumter County School District, 775 F.2d 1509, 1510 (11th Cir. 1985). This principle coincides with the legislative intent that when devising election plans to remedy Section 2 violations, federal courts 'should exercise ... traditional equitable powers to fashion the relief so that it completely remedies the prior dilution of minority voting strength and fully provides equal opportunity for minority citizens to participate and to elect candidates of their choice.' S.Rep. No. 417 97th Cong., 2d Sess. 31, reprinted in 1982 U.S. Code Cong. & Adm. News 177, 208.

The Three-Judge Court's plan meets the criteria set out above for remedying a Section 2 violation. The Court went to

great lengths to conform its plan as nearly as possible to the one person, one vote criteria, allowing for variations only insofar as to accommodate relevant and appropriate state policy. [3] Specifically the Court found that its plan for the House had a total deviation of 1.98 percent, a de minimis deviation, "therefore, the constitutional requirement of one man, one vote implicit in the Fourteenth Amendment is satisfied." SRAC Appendix 72. The Court further found that the plan was not retrogressive, as it created twenty-three (23) districts with a majority black voting age population as opposed to twenty (20) black voting age population districts under the 1981 plan when drawn. A total of twenty-eight (28) districts with black total population majorities are included in the Court

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[3] That consideration did not apply to Congressional Districts where the Court, following mathematical exactness as a criteria, arrived at a zero percent deviation. SRAC Appendix 17, 81-82.

drawn House plan, as opposed to the twenty-six (26) districts drawn in 1981 and the twenty-four (24) which existed under the 1990 census. SRAC Appendix 71-72. The Three-Judge Court stated it "looked to the voting age population as the measure of opportunity to elect the candidate of one's choice". SRAC Appendix 48. Voting age population is the same standard utilized in other cases in establishing a remedy for a Section 2 violation. See, McNeil, supra at 945; Romero v. City of Pomona, 665 F.Supp. 853, 864 (C.D. Cal. 1987) aff'd 883 F.2d 1418 (9th Cir. 1989).

A Section 2 remedy does not impose an affirmative duty to maximize the number of minority districts. As was noted in Watkins v. Mabus, 771 F.Supp. 789, 806 (S.D. Miss. 1991) aff'd in part, vac in part 112 S.Ct. 412 (1992)

> [i]t is doubtful whether Gingles held, ... that the amended Voting Rights §2 requires that states go beyond the requirement of non-dis-

> crimination in order to create as many non-white majority districts as possible. See, e.g., Jeffers v. Clinton, 730 F.Supp. 196, 217 (E.D. Ark. 1989) (three judge court), aff'd mem., 111 S.Ct. 662 (1991) ('We are not holding that law requires the creation of any particular number of majority-black districts.')

See also, State of Mississippi v. U.S., 490 F.Supp. 569, 582 (DDC 1979) aff'd mem 444 U.S. 1050 (1980).

The Three-Judge Court stated that it was

> ... guided by the decision in Jeffers v. Clinton, 730 F.Supp. 196, 205 (E.D. Ark. 1989), aff'd, 111 S.Ct. 662 (1991):
>
> > We agree that Thornburg and Smith cannot be automatically applied to the single member context. Dilution may be much more obvious in a case like Smith, where a potential majority of black voters was submerged in a two-member district. But the basic principle is the same. If lines are drawn that limit the number of majority-black single-member districts, and reasonably compact and con-

tiguous majority-black districts could have been drawn, and if racial cohesiveness in voting is so great that, as a practical matter, black voters' preferences for black candidates are frustrated by this system of apportionment, the outlines of a section 2 theory are made out.

Therefore, with the goal of providing minorities with an equal opportunity to elect the representatives of their choice in mind, we have analyzed the proposed plans as well as the plans we adopt today based on the following factors: 1) the extent to which the plans proposed and the plans adopted are consistent with the retrogression standard set forth in Beer and City of Lockhart; 2) the extent to which reasonable compact and contiguous majority black districts were and could be drawn; 3) the extent to which the minority group is politically cohesive; 4) the extent to which racially polarized voting patterns exist; 5)

> the extent to which the lines which have been drawn limit the number of majority-black single-member districts in light of the expressed state policies of the State of South Carolina. The Senate factors may be applied to the extent that they aid the court in its determination of these factors. This approach allows the court to formulate a plan which is consistent not only with the provisions of § 5, but insures that the court's plan will not violate the threshold requirements for liability under §2.

SRAC Appendix 45-47. See also, Wilson v. Eu, 823 P.2d 545, 565 (Cal. 1992).

The SRAC Appellants and Governor Campbell on Cross-Appeal assert that their plan should have been the measuring standard for the Court's plan. SRAC Jurisdictional Statement 20, Campbell Jurisdictional Statement 19. However, the Court detailed the problems with the plans presented by the parties as: excessively cutting county lines

and disregarding communities of interest, pitting political party incumbents against each other, and drawing plans only with regard to race or political affiliation. SRAC Appendix 63-64, 74-78, 80, 85.

The plans presented by the Appellants appeared to be seeking proportional representation. Indeed the Court noted that the plan presented by the Republican Party for the House was

> ... an attempt to achieve proportional representation on the basis of race, a result specifically not dictated by any federal or state law.

SRAC Appendix 56. [4]

Of course, Section 2 does not authorize the goal of proportional representation and expressly states that

> [n]othing in this section establishes a right to have members of a protected class elected in num-

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[4] The Republican Party is not an Appellant in this case, however, the drafter of the Cross-Appellant Governor's plans and the Republican Party's plans was the same individual. SRAC Appendix 78, fn 75.

> bers equal to their proportion in the population.

42 U.S.C. §1973.

The Court concluded that it was

> ... satisfied that its plan satisfies the requirements of the Voting Rights Act. The court's plan strikes the proper balance between the various interests arising in this type of proceeding, including equality of population in districts, racial fairness, and maintenance of the state's political subdivisions and communities of interest.

SRAC Appendix 79 [5] See also, SRAC Appendix 75. The Court specifically stated it had "... reviewed the Court's plan and conclude[d] that it contains no obvious violation of §2." SRAC Appendix 76.

The plan created by the Three-Judge Court, therefore, complied with a Section 2 remedy. Although the Three-Judge Court stated it was not obliged to conduct an indepth Section 2 review, it proceeded to in

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[5] This same indepth review was also followed by the Court for the Senate and Congress. SRAC Appendix 58-70, 79-85.

fact allow Section 2 testimony as to the Gingles listed factors and incorporated these findings in its subsequent plans.

IV

THE THREE-JUDGE COURT CORRECTLY INCORPORATED APPROPRIATE STATE POLICY IN DRAWING THE COURT ORDERED REDISTRICTING PLANS.

The Appellants argue that the Court should not have followed state policies in the drawing of its plans. SRAC Jurisdiction Statement 28, Campbell Jurisdictional Statement 22-25. However, that argument disregards the clear precedent of this Court that states that a court in implementing its own redistricting plans must follow state policy unless to follow that state policy would violate applicable constitutional or statutory standards or provisions. White v. Weiser, 412 U.S. 783, 794-795 (1973); Whitcomb v. Chavis, 403 U.S. 124, 160-161 (1971); Upham v. Seamon, 456 U.S. 37, 41-42 (1982). See also, Wesch v. Hunt, 785

F.Supp. 1491, 1498 (SD Ala. 1992) aff'd 112 S.Ct. 1926 (1992) pet. for cert. filed (U.S. June 5, 1992); Terrazas v. Slagle, 789 F.Supp. 828, 838 (W.D. Tex 1991) aff'd 66 U.S.L.W. 3870, 3878 (U.S. June 29, 1992); Emison v Growe, 782 F.Supp. 427, 447-448 (D. Minn. 1992) prob. juris. noted 112 S.Ct. 1557 (1992).

V.
SECTION 5 STANDARDS OF THE VOTING RIGHTS ACT WERE APPROPRIATELY APPLIED BY THE THREE-JUDGE COURT IN FASHIONING ITS COURT ORDERED REDISTRICTING PLANS.

The Appellants contend that the Court erroneously applied Section 5 standards as Section 5 only applies to the question of preclearance of a change by the courts or the Justice Department. SRAC Jurisdictional Statement 22-23. This argument disregards the years of precedent in reapportionment and redistricting cases which hold that Section 5 standards are the appropriate standards for a court to apply in fashioning

a plan. In McDaniel v. Sanchez, 452 U.S. 130 (1981) the court quoted from the 1975 Senate Committee Report on the bill that extended the life of the Voting Rights Act which stated that

> '... in fashioning the plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases.' Senate Report, at 18-19. [fn. cite omitted]

Sanchez at 149.

CONCLUSION

For the foregoing reasons the Appeal of SRAC and the Cross-Appeal of Governor Campbell should be dismissed or in the alternative, the Three-Judge Court's Order below should be affirmed.

Respectfully submitted,

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Article I, §2 of the United States Constitution

House of Representatives; how constituted; power of impeachment.

The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and

excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersery four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five and Georgia three.

When vacancies happen in the represen tation from any state, the executive authority thereof shall issue writs of election to

fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.